

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
David C. Boyd
Marshall Johnson
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Joint Application of
Minnesota Power and Mesabi Nugget
Delaware, LLC for Approval of a Service
Extension Pursuant to Minn. Stat. § 216B.42

ISSUE DATE: September 20, 2007

DOCKET NO. E-015/SA-07-1079

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On August 9, 2007, Minnesota Power (MP) and Mesabi Nugget Delaware, LLC (Mesabi Nugget) filed a joint petition for approval of a service extension pursuant to Minn. Stat. § 216B.42.

On August 27, 2007, Lake Country Power (Lake Country) filed comments opposing the joint petition.

On September 4, 2007, the petitioners filed reply comments and the Department of Commerce filed comments.

The Commission met on September 13, 2007 to consider this matter.

FINDINGS AND CONCLUSIONS

I. The Joint Petition

In their Joint Petition, MP and Mesabi Nugget requested the Commission to authorize MP to extend electric service to Mesabi Nugget's planned iron nugget production plant. The Joint Petitioners stated that the plant, which is expected to have an electric load of 16 MW at start-up, will be located within the exclusive service area of Lake Country Power but that approval of the Joint Petition is authorized by the exception provided in Minn. Stat. § 216B.42. The petition identified the requirements of Minn. Stat. § 216B.42 and provided short narrative paragraphs as to how those requirements were met in this case.

In reply comments, the petitioners argued that MP was clearly the superior supplier of electricity

to Mesabi's planned iron nugget production plant.

II. Lake Country Power's Objection

Lake Country acknowledged that the joint application alleges certain facts in respect to each of the statutory factors in support of approving MP's service to Mesabi Nugget, but asserted Lake Country Power, in conjunction with its wholesale supplier, Great River Energy, is better able to satisfy the factors on which the Commission's service decision must be made. Lake Country stated that the Commission has recognized it must approach such petitions with the broad public interest as its touchstone, not customer choice. Lake Country argued that the joint application does not show that MP's service to the Mesabi Nugget plant is in the public interest. Lake Country alleged that the Joint Petition omits many factors which show, according to Lake Country, that Lake Country should serve the plant.

Lake Country concluded that the Commission should dismiss the petition or, if it does not do so, refer the matter to the Office of Administrative Hearings for a contested case hearing.

III. The Department's Comments

The Department recommended that the Commission refer the issues raised in the petition to the Office of Administrative Hearings for contested case proceedings.

IV. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over assigned service area disputes under Minn. Stat. §§ 216B.37-.44. The Commission has jurisdiction to permit large customers located outside municipalities to receive service from utilities other than those assigned to serve their areas under Minn. Stat. § 216B.42.

The Commission finds that it cannot determine, on the basis of the record before it, which utility should serve the iron nugget production plant. That determination turns on specific facts which are best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

V. Issues to be Addressed

The ultimate issue in this case is which utility should serve the iron nugget production plant being constructed by Mesabi Nugget. That issue turns on a series of sub-issues, including but not necessarily limited to, those set forth in Minn. Stat. § 216B.42.

The parties shall address the above issues in the course of contested case proceedings. They may also raise and address other issues relevant to the joint petition filed by Mesabi Nugget and MP.

VI. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Bruce H. Johnson. Through Friday, September 21, 2007, his address and telephone number are as follows: 100 Washington Square, Suite 1700, Minneapolis, MN 55401-2138; phone number 612-341-7607; Bruce.Johnson@state.mn.us.

Effective Monday, September 24, 2007, his address and phone number are as follows: Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620; phone number: 612-341-7607; Bruce.Johnson@state.mn.us.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Stuart Mitchell, Public

Utilities Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2242; or Kari Zipko, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are Mesabi Nugget, MP, Lake Country Power, and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference has been scheduled for September 28, 2007, at 1:30 p.m. It will take place at the Small Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

Mesabi Nugget and MP stated that there was an urgent need to resolve this matter expeditiously. Lake Country stated that its rights and concerns must receive due process. The Commission asks the Administrative Law Judge to take the parties' comments into consideration in scheduling and conducting the contested case proceedings, consistent with the requirements of due process, and to time his report to the Commission accordingly.

VII. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

VIII. Ex Parte Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers the issue of which utility should serve the iron nugget production plant being constructed by Mesabi Nugget Delaware, LLC to the Office of Administrative Hearings for contested case proceedings, as set forth above.

2. The prehearing conference for this matter is scheduled to take place September 28, 2007 at 1:30 p.m. in the Small Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2147.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
(effective Monday, September 24, 2007)

Location: 600 North Robert Street, St. Paul, MN

Mailing Address: P.O. Box 64620, St. Paul, MN 55164-0620

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350

St. Paul, Minnesota 55101-2147

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Minnesota Power and Mesabi Nugget
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Extension Pursuant to Minn. Stat. § 216B.42

MPUC Docket No. E-015/SA-07-1079

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Bruce H. Johnson, Office of Administrative Hearings, (mailing address effective Monday, September 24, 2007) P.O. Box 64620, St. Paul, MN 55164-0620; phone number through Friday, September 20, 2007: 612-341-7607; phone number effective Monday, September 24, 2007: 651-361-7839; Bruce.Johnson@state.mn.us.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____